



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

October 22, 2003

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Robert Kempf, President  
George F. Kempf Supply Co.  
5800 Linbergh Blvd.  
Philadelphia, PA 19143

Re: Lower Darby Creek Area Superfund Site  
Substantiation of May 31, 2002 Business Confidentiality Claim  
George F. Kempf Supply Co.

Dear Mr. Kempf:

The United States Environmental Protection Agency (EPA) has received a request under the Freedom of Information Act ("FOIA") for the May 31, 2002 response of George F. Kempf Supply Co. ("Kempf") to EPA's Information Request. You have indicated that the response "contains confidential business information."

In accordance with EPA's regulations (40 C.F.R. Part 2, Subpart B), the FOIA request will be initially denied by EPA to afford you an opportunity to substantiate your claim before a final determination is made. A copy of the applicable regulations is enclosed.

This letter is to notify you that the EPA Office of Regional Counsel will be making a final confidentiality determination concerning this information. If you believe that some or all of the submitted information is entitled to confidential treatment, please answer the questions below. Please be specific by page and paragraph when identifying the information subject to your claim. Any information not specifically identified as subject to a confidentiality claim will be disclosed to any requester without further notice to you. For each item or class of information that you identify as being subject to your claim, please answer the following questions:

1. For what period of time do you request that the information be maintained as confidential? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.



2. Why should the information you claim as confidential be protected for the time period specified in your answer to question #1?
3. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information still be considered confidential?
4. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.
5. Is the information contained in any publicly available material such as promotional publications, annual reports, articles, etc.? Is there any means by which a member of the public could obtain access to the information?
6. Discuss with specificity why release of the information claimed as confidential is likely to cause substantial harm, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?
7. Do you assert that the information is "voluntarily submitted" as defined at 40 C.F.R. 2.201(i)? If so, explain why, and how disclosure would tend to lessen EPA's ability to obtain similar information in the future.
8. Any other issue you deem relevant. Please note that you bear the burden of substantiating your confidentiality claim. Conclusory allegations will be given little or no weight in the determination. If you wish to claim any of the information in your response as confidential, you must mark the response "Confidential" or with a similar designation, and must bracket all text so claimed. Information so designated will be disclosed by EPA only to the extent allowed by, and by means of the procedures set forth in, 40 C.F.R. Part 2, Subpart B. If you fail to claim the information as confidential upon submission, it may be made available to the public without further notice to you.

Your comments must be postmarked or hand-delivered to this office by the 15th working day after your receipt of this letter. You may seek an extension of time to submit your comments, but the request must be made, before the end of the response period, to:

Brian M. Nishitani  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street (3RC44)  
Philadelphia, PA 19103  
(215) 814-267.



In accordance with 40 C.F.R. § 2.205(b), except in extraordinary circumstances, no extension will be made without the permission of the FOIA requester. Further, in accordance with 40 C.F.R. §§ 2.205(c) and 2.203(b), if you wish your response to be treated as confidential, you must mark it as such, employing language such as *trade secret*, *proprietary*, or *company confidential*. Failure to submit your comments within the response time, including any extension of time permitted, will be regarded as a waiver of your confidentiality claim, and EPA will be free to release the information. Should you have any questions in this matter, please call Brian Nishitani, Senior Assistant Regional Counsel, at (215) 814-2675.

Sincerely,



Carlyn Winter Prisk, Investigator  
PRP Investigation and  
Site Information Section

cc: Brian Nishitani, Esq. (3RC44)  
David J. Parsells, Esq. (Stevens & Lee)



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